



June 14, 2006

RE: RFP DGS-2053 **ADDENDUM #36 - Model Contract Language**

TO ALL INTERESTED BIDDERS:

This addendum makes changes or corrections to the following RFP Sections:

SECTION 11, Module 1

Item 23, Limitations of Liability, page 16. Deleted end of last sentence in paragraph d.

Item 27, Required Payment Date, page 17. Added 2 sentences to the end of the paragraph.

SECTION 11, Module 2

Item 23, Limitations of Liability, page 16. Deleted end of last sentence in paragraph d.

Item 27, Required Payment Date, page 17. Added 2 sentences to the end of the paragraph.

SECTION 11, Module 3

Item 23, Limitations of Liability, page 16. Deleted end of last sentence in paragraph d.

Item 27, Required Payment Date, page 17. Added 2 sentences to the end of the paragraph.

SECTION 11, Module 4

Item 23, Limitations of Liability, page 16. Deleted end of last sentence in paragraph d.

Item 27, Required Payment Date, page 17. Added 2 sentences to the end of the paragraph.



GENERAL NOTE

All of the references above are summaries. Please read the entire text of each change. Changes are indicated by a horizontal or vertical line in the right margin of each page. A horizontal line indicates that text has been removed. A vertical line means text has been added or text has been changed. Please replace the RFP pages with the pages included in this addendum.

Please send any questions to me via e-mail.

Sincerely,

Steven Casarez
DGS, Procurement Division
Technology Acquisitions Section
P.O. Box 989054
West Sacramento, CA 95798-9054
(916) 375-4481
email: steve.casarez@dgs.ca.gov

Section 11, Module 1

- c. Neither Contractor nor the State will be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except as expressly set forth below.
- d. Sections 23(a) and (c) will not apply to Contractor's liability for damages (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work; (ii) in connection with liability under the provision, entitled "Patent, Copyright, and Trade Secret Protection" (Section 32) or to any other liability (including without limitation indemnification obligations) for infringement of third party Intellectual Property Rights; (iii) in connection with claims covered by any specific provision herein calling for performance deficiency charges; (iv) in connection with claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; (v) in connection with costs or attorneys' fees that the State becomes entitled to recover as a prevailing party in any action; (vi) in connection with breaches of Contractor's obligations of confidentiality; (vii) in connection with claims based upon a breach of Section 36.a hereof or upon any repudiation of this Contract by Contractor or Contractor's refusal to perform its duties and obligations hereunder; (viii) for Cost to Cover damages; or (ix) in connection with Contractor's failure to perform its obligations under Section 21 in the event of a force majeure event.

24. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

- a. Contractor shall be liable for damages arising out of injury to person(s) and/or damage to the property of the State, employees of the State, or any other person(s) designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables or Services either at Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault, negligence, or willful misconduct of Contractor.
- b. Contractor shall not be liable for damages solely arising out of or caused by an alteration or an Attachment not made or installed by Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by Contractor during the Contract.

25. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, Deliverables, Services,

materials, or supplies in connection with the performance of this Contract. The following shall apply with respect to such claims:

- a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify Contractor shall relieve it of its obligations under this Contract except to the extent that Contractor has suffered actual prejudice by such delay or failure); and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

26. TIMELINESS

Time is of the essence in this Contract with respect to Contractor's performance and obligations.

27. REQUIRED PAYMENT DATE

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 *et seq.* Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of Services; or (ii) receipt of an undisputed invoice, whichever is later. Non-State Customers shall be subject to a late payment fee if payment is issued after the late payment date. The late payment date shall be forty-five (45) calendar days after receipt of an undisputed invoice. The amount of the late payment fee shall be as set forth in Government Code Sections 927.6 and 927.7.

28. CONTRACT MODIFICATION

Subject to Sections 2.a, 55 and 72, no amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties. Notwithstanding this provision:

- a. The State and Contractor may agree orally on issues of immediate State operational need or emergency necessity with the concurrence of the State and Contractor Program Managers, respectively. In such situations, Contractor will prepare a Letter of Concurrence within three (3)

Section 11, Module 2

- c. Neither Contractor nor the State will be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except as expressly set forth below.
- d. Sections 23(a) and (c) will not apply to Contractor's liability for damages (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work; (ii) in connection with liability under the provision, entitled "Patent, Copyright, and Trade Secret Protection" (Section 32) or to any other liability (including without limitation indemnification obligations) for infringement of third party Intellectual Property Rights; (iii) in connection with claims covered by any specific provision herein calling for performance deficiency charges; (iv) in connection with claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; (v) in connection with costs or attorneys' fees that the State becomes entitled to recover as a prevailing party in any action; (vi) in connection with breaches of Contractor's obligations of confidentiality; (vii) in connection with claims based upon a breach of Section 36.a hereof or upon any repudiation of this Contract by Contractor or Contractor's refusal to perform its duties and obligations hereunder; (viii) for Cost to Cover damages; or (ix) in connection with Contractor's failure to perform its obligations under Section 21 in the event of a force majeure event.

24. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

- a. Contractor shall be liable for damages arising out of injury to person(s) and/or damage to the property of the State, employees of the State, or any other person(s) designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables or Services either at Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault, negligence, or willful misconduct of Contractor.
- b. Contractor shall not be liable for damages solely arising out of or caused by an alteration or an Attachment not made or installed by Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by Contractor during the Contract.

25. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, Deliverables, Services,

materials, or supplies in connection with the performance of this Contract. The following shall apply with respect to such claims:

- a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify Contractor shall relieve it of its obligations under this Contract except to the extent that Contractor has suffered actual prejudice by such delay or failure); and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

26. TIMELINESS

Time is of the essence in this Contract with respect to Contractor's performance and obligations.

27. REQUIRED PAYMENT DATE

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 *et seq.* Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of Services; or (ii) receipt of an undisputed invoice, whichever is later. Non-State Customers shall be subject to a late payment fee if payment is issued after the late payment date. The late payment date shall be forty-five (45) calendar days after receipt of an undisputed invoice. The amount of the late payment fee shall be as set forth in Government Code Sections 927.6 and 927.7.

28. CONTRACT MODIFICATION

Subject to Sections 2.a, 55 and 72, no amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties. Notwithstanding this provision:

- a. The State and Contractor may agree orally on issues of immediate State operational need or emergency necessity with the concurrence of the State and Contractor Program Managers, respectively. In such situations, Contractor will prepare a Letter of Concurrence within three (3)

Section 11, Module 3

- c. Neither Contractor nor the State will be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except as expressly set forth below.
- d. Sections 23(a) and (c) will not apply to Contractor's liability for damages (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work; (ii) in connection with liability under the provision, entitled "Patent, Copyright, and Trade Secret Protection" (Section 32) or to any other liability (including without limitation indemnification obligations) for infringement of third party Intellectual Property Rights; (iii) in connection with claims covered by any specific provision herein calling for performance deficiency charges; (iv) in connection with claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; (v) in connection with costs or attorneys' fees that the State becomes entitled to recover as a prevailing party in any action; (vi) in connection with breaches of Contractor's obligations of confidentiality; (vii) in connection with claims based upon a breach of Section 36.a hereof or upon any repudiation of this Contract by Contractor or Contractor's refusal to perform its duties and obligations hereunder; (viii) for Cost to Cover damages; or (ix) in connection with Contractor's failure to perform its obligations under Section 21 in the event of a force majeure event.

24. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

- a. Contractor shall be liable for damages arising out of injury to person(s) and/or damage to the property of the State, employees of the State, or any other person(s) designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables or Services either at Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault, negligence, or willful misconduct of Contractor.
- b. Contractor shall not be liable for damages solely arising out of or caused by an alteration or an Attachment not made or installed by Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by Contractor during the Contract.

25. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, Deliverables, Services,

materials, or supplies in connection with the performance of this Contract. The following shall apply with respect to such claims:

- a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify Contractor shall relieve it of its obligations under this Contract except to the extent that Contractor has suffered actual prejudice by such delay or failure); and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

26. TIMELINESS

Time is of the essence in this Contract with respect to Contractor's performance and obligations.

27. REQUIRED PAYMENT DATE

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 *et seq.* Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of Services; or (ii) receipt of an undisputed invoice, whichever is later. Non-State Customers shall be subject to a late payment fee if payment is issued after the late payment date. The late payment date shall be forty-five (45) calendar days after receipt of an undisputed invoice. The amount of the late payment fee shall be as set forth in Government Code Sections 927.6 and 927.7.

28. CONTRACT MODIFICATION

Subject to Sections 2.a, 55 and 72, no amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties. Notwithstanding this provision:

- a. The State and Contractor may agree orally on issues of immediate State operational need or emergency necessity with the concurrence of the State and Contractor Program Managers, respectively. In such situations, Contractor will prepare a Letter of Concurrence within three (3)

Section 11, Module 4

23. LIMITATION OF LIABILITY

- a. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to \$50 Million, except as expressly set forth below.
- b. The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the total charges due and payable to Contractor hereunder that have not been paid to Contractor. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- c. Neither Contractor nor the State will be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except as expressly set forth below.
- d. Sections 23(a) and (c) will not apply to Contractor's liability for damages (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work; (ii) in connection with liability under the provision, entitled "Patent, Copyright, and Trade Secret Protection" (Section 32) or to any other liability (including without limitation indemnification obligations) for infringement of third party Intellectual Property Rights; (iii) in connection with claims covered by any specific provision herein calling for performance deficiency charges; (iv) in connection with claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; (v) in connection with costs or attorneys' fees that the State becomes entitled to recover as a prevailing party in any action; (vi) in connection with breaches of Contractor's obligations of confidentiality; (vii) in connection with claims based upon a breach of Section 36.a hereof or upon any repudiation of this Contract by Contractor or Contractor's refusal to perform its duties and obligations hereunder; (viii) for Cost to Cover damages; or (ix) in connection with Contractor's failure to perform its obligations under Section 21 in the event of a force majeure event.

24. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

- a. Contractor shall be liable for damages arising out of injury to person(s) and/or damage to the property of the State, employees of the State, or any other person(s) designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables or Services either at Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault, negligence, or willful misconduct of Contractor.
- b. Contractor shall not be liable for damages solely arising out of or caused by an alteration or an Attachment not made or installed by Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by Contractor during the Contract.

25. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, Deliverables, Services, materials, or supplies in connection with the performance of this Contract. The following shall apply with respect to such claims:

- a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify Contractor shall relieve it of its obligations under this Contract except to the extent that Contractor has suffered actual prejudice by such delay or failure); and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

26. TIMELINESS

Time is of the essence in this Contract with respect to Contractor's performance and obligations.

27. REQUIRED PAYMENT DATE

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 *et seq.* Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of Services; or (ii) receipt of an undisputed invoice, whichever is later. Non-State Customers shall be subject to a late payment fee if payment is issued after the late payment date. The late payment date shall be forty-five (45) calendar days after receipt of an undisputed invoice. The amount of the late payment fee shall be as set forth in Government Code Sections 927.6 and 927.7.